IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6625 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

VAGHJI RATANSI KOTAK

Versus

COMPETENT AUTHORITY AND DY. COLLECTOR (ULC), RAJKOT & ANR.

Appearance:

Shri J.R. Nanavaty, Advocate, for the Petitioners

Shri T.H. Sompura, Asst. Govt. Pleader, for the Respondents

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 06/03/96

ORAL JUDGEMENT

The order passed by the Competent Authority at Rajkot (respondent No. 1 herein) on 28th December 1983 under sec. 8(4) of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief) as affirmed in

appeal by the order passed by the Urban Land Tribunal at Ahmedabad (Respondent No.2 herein) on 27th July 1988 in Appeal No. Rajkot-32 of 1988 is under challenge in this petition under art. 227 of the Constitution of India. By his impugned order, respondent No.1 declared the holding of one Vaghji Ratansi Kotak (the deceased for convenience) to be in excess of the ceiling limit by 3919.21 square meters.

2. The facts giving rise to this petition move in a narrow compass. The deceased was in occupation and possession of certain properties within the urban agglomeration of Rajkot. On coming into force of the Act, he filed his declaration in the prescribed form under sec. 6(1) of the Act. Thereafter he appears to have breathed his last some time in 1979. His declaration was processed thereafter by respondent No. 1. A draft statement under sec. 8 thereof was prepared and sent in the name of the deceased. It was however received by his son, named, Manharlal. He filed his objections thereto through his advocate, named, Shri P.J. Joshi. After hearing the party, by his order passed on 28th December 1983 under sec. 8(4) of the Act, respondent No.1 declared the holding of the deceased to be in excess of the ceiling limit by 3919.21 square meters. Its copy is at Annexure A to this petition. That aggrieved the present petitioners as other heirs of the deceased. They carried the matter in appeal before respondent No. 2 under sec. 33 of the Act. It came to be registered as Appeal No. Rajkot-32 of 1988. A copy of the memo of appeal is at Annexure B to this petition. By the order passed on 27th July 1988 in the aforesaid appeal, respondent No. 2 dismissed it. Its copy is at Annexure C to this petition. The aggrieved petitioners have thereupon approached this Court by means of this petition under art. 227 of the Constitution of India for questioning the correctness of the order at Annexure A to this petition as affirmed in appeal by the appellate order at Annexure C to this petition.

3. It is difficult to accept the submission urged before me by learned Advocate Shri Nanavaty for the petitioners to the effect that the petitioners were not heard in the matter by respondent No. 1. It may be mentioned that the deceased filed his declaration in the prescribed form under sec. 6(1) of the Act. He filed that form for himself and his wife (petitioner No. 1 herein). In view of the definition of "person" contained in sec. 2(i) read with the definition of "family" contained in sec. 2(f) of the Act, the holding of the wife will be included in that of her husband and the

holding of the husband will be included in that of his wife as the case may be. It transpires from the material on record that the declarant (the deceased) breathed his last some time in 1979 leaving behind him his widow and sons and daughters. It appears that the draft statement under sec. 8 of the Act was served in the name of the deceased and it was received by his one son, named, Manharlal. He filed his objections thereto. On the basis of those objections, the impugned order at Annexure A to this petition came to be passed by respondent No. 1. Since one heir of the deceased was heard in the matter and since the petitioners have nowhere claimed that their interests were adverse to that of said Manharlal (a son of the deceased), it would not be of any consequence or significance even if the other heirs or any of them are not heard.

4. I am fortified in my view by the ruling of this Court in the case of Patel Gordhan Kadvabhai and others v. Competent Authority and Additional Collector, Rajkot and others reported in 1988(1) 29(1) G.L.R. 121 as relied on by learned Assistant Government Pleader Shri Sompura to repel the aforesaid contention raised by the learned advocate for the petitioners. It has been held therein that, where the person as defined in the Act consists of several individuals, all these individuals together are entitled to hold one unit of land and all those individuals are not required to be served with a notice under rule 5 nor are they entitled to be heard individually. Sitting as a single Judge, I am bound by the aforesaid ruling of this Court. Even otherwise, I am in respectful agreement therewith.

5. By analogy, the aforesaid ruling of this Court will be applicable in the instant case. The deceased was alive and he himself filed the declaration in the prescribed form under sec. 6(1) of the Act. His holding as on the date of coming into force of the Act will have to be taken into consideration. He died some time in 1979 only. That would not change the position regarding applicability of the Act and the holding will have to be considered as that belonging to the deceased irrespective of execution of any testamentary document by the deceased or a succession under the Hindu Succession Act, 1956. As pointed out hereinabove, the deceased was survived by his widow (petitioner No. 1) and sons and daughters. One son did appear in response to the draft statement under sec. 8 of the Act served to him. In that view of the matter, it was not necessary to serve any notice to any other heir or any of them individually. The grievance in that regard voiced by or on behalf of the petitioners has

therefore no merit or substance.

6. Learned Advocate Shri Nanavaty for the petitioners is right in his submission that the house property in Bhomeshwar Society ought not to have been included in the holding of the deceased in view of the binding ruling of the Supreme Court in the case of Smt. Meera Gupta v. State of West Bengal and others reported in AIR 1992 Supreme Court 1567. Shri Nanavaty for the petitioners is also right in his submission that the shop property situated at the Canal Road also ought to have been excluded from the holding of the petitioners. They have been wrongly included in his holding. To that extent the impugned orders at Annexures A and C to this petition cannot be sustained in law in toto. They deserve modification by deducting the area of the aforesaid two properties from his holding.

7. The area of the house property is shown to be 515.80 square meters and the area of the shop on the Canal Road is 24 square meters. The area to be deducted from the holding of the deceased would thus come to 539.80 square meters. That would reduce the excess land in the holding of the deceasedto 3379.41 square meters.

8. In the result, this petition is accepted to the aforesaid extent. The impugned orders at Annexures A and C to this petition are maintained subject to the modification that instead of the area of the excess land to the tune of 3919.21 square meters, the area of 3379.41 square meters is substituted. The matter is remanded to respondent No. 1 for preparation of the final statement under sec. 9 of the Act in the light of this judgment of mine after giving an opportunity of hearing to the petitioners for choice of land to be surrendered as surplus. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.
